

October 4, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Lands' End Marina, Inc.

Date of Filing: August 9, 2006

Case No.: TEE-0036

On August 9, 2006, Lands' End Marina, Inc. (Lands' End) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that the request should be denied.

I. Background

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.¹ The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's

¹ 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

ability to anticipate and respond to potential energy shortages.²

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, and propane. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B³ and permits reporting firms to rely on reasonable estimates.⁴

II. Exception Criteria

OHA has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens."⁵ Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

The following examples illustrate some of the circumstances that may justify relief from the reporting requirement. We have granted exceptions where: the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability;⁶ the only person capable of preparing the report is ill and the firm cannot afford to hire

² See H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

³ Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

⁴ Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

⁵ 42 U.S.C. § 7194(a); see 10 C.F.R. § 1003.25(b)(2).

⁶ *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

outside help;⁷ extreme or unusual circumstances disrupt a firm's activities;⁸ a combination of factors renders the reporting requirement an undue burden.⁹

On the other hand, when considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Inconvenience alone does not constitute a hardship warranting relief.¹⁰ Similarly, the fact that a firm is relatively small or that it has filed reports for a number of years does not constitute a basis for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable.¹¹

III. The Lands' End Application for Exception

Lands' End filed its exception application in August 2006.¹² Based upon a review of the application, we concluded that there was not sufficient information to permit us to act favorably on the request. We offered Lands' End the opportunity to submit additional information, but it did not do so.¹³

Lands' End is a marina located in Michigan. EIA has advised us that Lands' End has filed Form EIA-782B each month since

⁷ *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

⁸ *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

⁹ *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner).

¹⁰ *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

¹¹ *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

¹² The Lands' End Application for Exception, submitted to OHA on August 9, 2006.

¹³ Letter from Ronald D. Hester, OHA to Mr. Michael Lambert, Lands' End, dated August 31, 2006.

2004.¹⁴ Lands' End states that the firm has encountered financial difficulties.¹⁵ To support its assertion, the firm submitted its financial statements for the first six months of calendar years 2005 and 2006.¹⁶ The firm states that as a result of its financial difficulties it had to reduce its bookkeeper's hours and its administrative staff from sixteen employees in 2005 to twelve employees this year.¹⁷

IV. Analysis

The Form EIA-782B reporting burden is not onerous. Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that is required to operate a business. The EIA estimates that it should normally take approximately two and one-half hours per month for a firm to fill out EIA-782B.¹⁸ The burden of this requirement can be substantially reduced by the use of estimates.¹⁹

Lands' End's argument -- that the firm has experienced financial difficulties and had to reduce its staff -- does not indicate that the firm is experiencing a burden significantly greater than that experienced by other firms who are required to file.²⁰ Given the apparent seasonal nature of a marina located in Michigan, financial information for the first six months of calendar years 2005 and 2006 is not sufficient to establish financial hardship. Moreover, a reduction in administrative personnel by itself is not sufficient to conclude that the preparation of the Form poses a disproportionate burden on the firm. Firms are periodically rotated in and out of the EIA survey pool and those that are not chosen during one rotation may be selected to participate as part of a subsequent sample.

¹⁴ Conversation between Ronald D. Hester, OHA and Tammy Heppner, EIA on August 18, 2006.

¹⁵ The Lands' End Application for Exception, submitted to OHA on August 9, 2006.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See Section 10 of General Instructions to Form EIA- 782B.

¹⁹ See Section 7 of the General Instructions to Form EIA-782B.

²⁰ See *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990) (providing that if firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable); see also *Taylor Oil Co.*, 27 DOE ¶ 81,010 (2000) (relief denied where the firm had participated in filing the reports for many years).

As the foregoing indicates the firm has not demonstrated that it meets the standards for exception relief. Accordingly, we have determined that the exception request should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Application for Exception filed by Lands' End Marina, Inc., Case No. TEE-0036, be, and hereby is, denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay
Director
Office of Hearings and Appeals

Date: October 4, 2006